

**SANITIZED DECISION – 06-270 C – BY GEORGE V. PIPER, ALJ – SUBMITTED
for DECISION on JUNE 26, 2006 – ISSUED on AUGUST 15, 2006**

SYNOPSIS

CONSUMERS’ SALES AND SERVICE TAX – TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF – The taxpayer’s failure to appear at hearing or to otherwise present any evidence respecting the claim set forth in its petition for reassessment will result in a denial of relief to the taxpayer. *See* W.Va. Code § 11-10A-10(e) [2002]; W.Va. Code St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On February 15, 2006, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a consumers’ sales and service tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the Commissioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code. The assessment was for the period of July 1, 2004 through December 31, 2005, for tax of \$, interest, through February 15, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked April 12, 2006, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2002].

Subsequently, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and W.Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

FINDINGS OF FACT

1. In its petition for reassessment, Petitioner argued that it did not do business in either of the years 2005 or 2006 and that it wanted a reassessment based upon actual amounts sold.
2. Petitioner never provided any evidence as to what was the accurate amount of consumers' sales and service taxes owed for the audit period.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessment is erroneous or otherwise invalid.

In this case, Petitioner provided absolutely no evidence refuting the estimated assessment issued by the Division.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a Petitioner to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W.Va. Code St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

The Petitioner in this matter has failed to carry its burden of proving that the assessment of taxes against him is erroneous, unlawful, void, or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of July 1, 2004 through December 31, 2005, for tax of \$, interest of \$, and additions to tax of \$, **totaling \$**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this consumers' sales and service tax assessment until this liability is fully paid.